

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
National Rural Telecommunications Cooperative)	DA 02-1796
Petition for Reconsideration of the)	
)	
Second Round Assignment of)	
Geostationary Satellite Orbit Locations)	
to Fixed Satellite Service Space Stations)	
in the Ka-band)	

MEMORANDUM OPINION AND ORDER

Adopted: August 12, 2003

Released: August 12, 2003

By the Chief, International Bureau:

I. INTRODUCTION

1. By this Order, we deny the Petition for Reconsideration from the National Rural Telecommunications Cooperative (NRTC) filed in response to the Second Round Assignment of Geostationary Satellite Orbit Locations to Fixed Satellite Service Space Stations in the Ka-band (Reassignment Order).¹ For the reasons set forth below, we affirm the decision in the Reassignment Order.

II. BACKGROUND

2. Since 1997, the International Bureau (Bureau) has licensed 21 entities to launch and operate fixed satellite service (FSS) satellites in the geostationary satellite orbit (GSO) operating in parts of the Ka-band frequencies.² The authorizations were granted in two “processing rounds.” Orbit locations in the First Ka-band Processing Round (First Round) were assigned by adopting a plan negotiated by the applicants that resolved conflicts over several contested locations.³ The First Round Assignment Order noted that the Bureau would entertain requests for changes in orbital assignments if all affected applicants agreed to those changes.⁴ In August 2001, as part of the Second Ka-band Processing

¹ Second Round Assignment of Geostationary Satellite Orbit Locations to Fixed Satellite Service Space Stations in the Ka-band, *Order*, 17 FCC Rcd 14400 (Int’l Bur. 2002) (*Reassignment Order*).

² The term “Ka-band” refers to space-to-Earth communications (downlink) in radio frequencies at 17.7-20.2 GHz and the corresponding Earth-to-space communications (uplink) in frequencies at 27.5-30.0 GHz.

³ Assignment of Orbital Locations to Space Stations in the Ka-band, *Order*, 13 FCC Rcd 1030 (Int’l Bur. 1997) (*First Round Assignment Order*).

⁴ *First Round Assignment Order*, 13 FCC Rcd at 1031.

Round (Second Round) the Bureau authorized nine new entities to operate GSO satellites in Ka-band frequencies, and authorized additional satellites for three entities licensed in the First Round.⁵ In the Second Round, the applicants were unable to reach an agreement regarding assignments. This was because there were not enough orbit locations with U.S.-date priority for international coordination purposes that also provided coverage of the continental United States to accommodate all the applicants. Thus, the Bureau assigned orbital locations based on several factors including each applicant's requests and its established policy of giving new entrants at least one location capable of serving the United States.⁶ Consequently, the Bureau assigned each applicant to at least one orbital location that it did not request or that did not have U.S. date priority. The Second Round Assignment Order provided that, as with previous assignment plans, requests for changes in the orbital assignment plan would be entertained if they were consistent with the basic structure of the plan and to which most, if not all, of the operators affected by the change agreed. Licensees were afforded 30 days to file such requests.⁷ The Second Round Assignment Order also stated that orbit locations that may become available as a result of then pending transfer applications would be made available to all Ka-band licensees before considering new applications for these locations.⁸ In response, two entities requested reassignment to orbital locations previously assigned to U.S. satellites. In the Reassignment Order granting these requests, the Satellite Division stated that to the extent that any other orbital locations become available as a result of future Commission action, "we will make these orbital locations available for reassignment to all Ka-band licensees before considering new applications for these locations."⁹

3. The NRTC filed a petition for reconsideration of the Reassignment Order.¹⁰ The NRTC is a cooperative of rural electric and telephone cooperatives and independent rural telephone cooperatives.¹¹ It is involved in broadband deployment for rural areas in the United States and has indicated its intent to file an application to operate a Ka-band system at the 113° W.L. orbital location should that location become available.¹² In its petition for reconsideration, the NRTC takes exception to the Division's statement that it would make vacated orbit locations available for reassignment to all Ka-band licensees before considering new applications. Specifically, the NRTC sets forth three reasons why the Bureau should reconsider the Reassignment Order. First, the NRTC asserts that the Order creates an unauthorized and inappropriate preference for existing Ka-band licensees.¹³ According to the NRTC, regardless of whether slots become available two or 10 years from now, qualified non-licensees are barred from applying to provide domestic satellite services in the Ka-band from vacated orbital locations.¹⁴ Second, NRTC states that eligibility for orbital slots that become available should be based on an applicant's qualifications, not a licensee's incumbency.¹⁵ The NRTC states there is no evidence to support the Division's presumption that existing licensees are better situated to use an orbital location that

⁵ Second Round Assignment of Geostationary Satellite Orbit Locations to Fixed Satellite Service Space Stations in the Ka-Band, *Order*, 16 FCC Rcd 14389 (Int'l Bur. 2001) (*Second Round Assignment Order*).

⁶ *Second Round Assignment Order*, 16 FCC Rcd at 14391.

⁷ *Second Round Assignment Order*, 16 FCC Rcd at 14400.

⁸ *Second Round Assignment Order*, 16 FCC Rcd at 14399.

⁹ *Reassignment Order*, 17 FCC Rcd at 14401.

¹⁰ Petition for Reconsideration of the National Rural Telecommunications Cooperative, filed August 29, 2002 (*NRTC Petition*).

¹¹ *NRTC Petition* at 2.

¹² *NRTC Petition* at IV, Appendix A: Notice of Intent to File Application dated August 8, 2002.

¹³ *NRTC Petition* at 4.

¹⁴ *NRTC Petition* at 5.

¹⁵ *NRTC Petition* at 6.

may become available. Third, the NRTC claims that the Reassignment Order is inconsistent with Commission precedent and unlawful.¹⁶ In the Ka-band Third Report and Order, NRTC notes, the Commission's policy was to promote open entry and competition, and thus "afford all applicants an opportunity to compete in the marketplace."¹⁷ The Reassignment Order, NRTC states, blocks open entry and inhibits competition by giving licensees a "first shot" at certain orbital locations. In this regard, NRTC claims that the Reassignment Order violates the Administrative Procedure Act because it failed to give parties an opportunity to comment before affecting the rights of non-licensed applicants.¹⁸ In addition, the NRTC refers to a then pending Notice of Proposed Rulemaking to streamline satellite licensing, and states that the proposal, to facilitate "new entry into the satellite market" demonstrates that the Division's restriction is invalid.¹⁹

4. Two entities, both second round licensees, opposed NRTC's petition. Pegasus Development Corporation (Pegasus) asserts that the "priority policy" to which the NRTC objects was set forth in the Second Round Assignment Order. In failing to seek reconsideration of that Order, NRTC's petition is untimely.²⁰ In addition, Pegasus states that NRTC lacks the necessary standing to file the petition as set forth in Section 1.106 of the Commission's rules.²¹ Pegasus also states that many second round assignments are compromises. Because Pegasus did not get its first choice locations, it asserts it should have priority for reassignment over the initial assignment of an applicant that has not participated in the "seven year, two round process."²² In addition, Pegasus notes that the primary justification for reassignment preferences is the immediacy of the International Telecommunication Union (ITU) deadlines for licensees to implement their systems.²³

5. TRW, Inc. asserts that, contrary to NRTC's petition, the Reassignment Order reinforces the "long established and well justified" Commission policy of providing incumbent licensees an opportunity to request a reassignment to an orbital location prior to consideration of new applications. It notes its own interest in requesting reassignment to the 113° W.L. orbital location should it become available. TRW also states that allowing incumbent licensees with systems under development to have first preference will ensure that satellite operators will commence services prior to the ITU deadlines.²⁴

¹⁶ *NRTC Petition* at 9.

¹⁷ *NRTC Petition* at 10, citing the Rulemaking to Amend Parts 1, 2, 21 and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *Third Report and Order*, 12 FCC Rcd 22310 (1997) (*Third Report and Order*).

¹⁸ *NRTC Petition* at 11.

¹⁹ *NRTC Petition* at 12.

²⁰ Pegasus Development Corporation, Opposition, filed September 20, 2002 (*Pegasus Opposition*).

²¹ *Pegasus Opposition* at 5.

²² *Pegasus Opposition* at 6.

²³ *Pegasus Opposition* at 6.

²⁴ TRW, Inc., Opposition to Petition for Reconsideration Filed September 11, 2002. In December 2002, TRW, Inc. transferred its Ka-band authorizations to Northrop Grumman Corporation. Application of TRW, Inc., Transferor and Northrop Grumman Corp., Transferee, *Order and Authorization*, 17 FCC Rcd 24625 (Int'l Bur., Sat. Div. 2002). Thereafter, Northrop Grumman surrendered its Ka-band authorization. Letter to Marlene H. Dortch, Secretary, FCC from Stephen D. Baruch, Attorney for Northrop Grumman (March 5, 2003).

The NRTC filed replies to both oppositions.²⁵

III. DISCUSSION

6. We do not agree with NRTC that the Reassignment Order creates an “unauthorized and inappropriate” preference for existing Ka-band licensees. In the context of processing rounds, orbital locations were treated as fungible as a means of resolving mutually exclusive applications.²⁶ If the parties could not agree to a compromise arrangement by which they resolved competing requests for the same location, the Commission would impose an arrangement under which it would decide which of the competing applicants to assign to a particular location. As a result, to the extent previously assigned orbital locations become available, a request for reassignment allows a current licensee the opportunity to seek a location that it may have originally requested and that may better conform to its business plans than the location assigned to it by the Bureau or to which it agreed as a compromise with other competing applicants. Consequently, the Bureau has permitted licensees to request reassignment to previously unavailable orbital locations without commencing a processing round.²⁷ In both the First and Second Ka-band Processing Rounds, most applicants did not receive all of their initially requested orbital locations due to the unavailability or competing requests for assignments to these locations.²⁸ Providing Ka-band licensees an opportunity to request reassignment to preferred locations equitably redistributes “contested” locations to those licensees that had previously requested those locations but were not ultimately assigned to them.

7. Further, as set forth in the Reassignment Order, allowing existing licensees to request reassignment to preferred orbital locations without engaging in the prolonged delays that occur with processing rounds enables the most expeditious use of spectrum. Expeditious use of Ka-band spectrum is of particular importance since most orbital locations have impending ITU bring-into-use dates. Existing licensees that have commenced construction are more apt to meet the ITU dates.²⁹ Failure to meet the ITU deadlines results in the loss of U.S. priority for the particular orbital location, thus allowing other countries to obtain coordination priority at that location. In granting the Second Round authorizations, the Bureau noted that impending ITU deadlines for operating satellites at available Ka-band orbital locations would be difficult to meet if the Commission initiated another processing round.³⁰

8. Moreover, we note that Section 316 of the Communications Act authorizes the Commission to modify any space station license on a permanent basis if the Commission determines that such action will promote the public interest, convenience and necessity.³¹ Thus, the Commission may

²⁵ Reply to Opposition (of TRW, Inc.) of the National Rural Telecommunications Cooperative, Filed September 23, 2002; NRTC Reply to Opposition (of Pegasus Development Corp.), filed September 30, 2002. The NRTC raised no new issues in its replies.

²⁶ Amendment of the Commission’s Space Station Licensing Rules and Policies, Mitigation of Orbital Debris, *First Report and Order and Further Notice of Proposed Rulemaking in IB Docket No 02-34, and First Report and Order in IB Docket No. 02-54*, 18 FCC Rcd 10760, 10820 (2003) (*Space Station Licensing Reform Order*).

²⁷ *See, e.g.*, Assignment of Orbital Locations to Space Stations in the Domestic Fixed Satellite Service, 11 FCC Rcd 13788, 13793 (1996).

²⁸ *Second Round Assignment Order*, 16 FCC Rcd at 14399.

²⁹ Each Ka-band authorization, consistent with the Commission’s rules, requires the licensee to commence construction of the first satellite in its system within one year of the grant of the authorization or the license is null and void. 47 C.F.R. § 25.145(f).

³⁰ *Second Round Assignment Order*, 16 FCC Rcd at 14395.

³¹ 47 U.S.C. § 316(a); *see, e.g.*, Modification of Licenses held by Iridium Constellation LLC and Iridium US LP, *Order*, DA 03-1917 (rel. June 11, 2003).

modify Ka-band licensees by reassigning orbit locations if such modifications are in the public interest.

9. In addition, we note that our policy regarding the assignment of newly available Ka-band orbital locations has not precluded the NRTC from filing an application for a Ka-band system.³² NRTC has indicated an interest in operating a Ka-band system at the 113° W.L. orbital location but asserted it is “blocked” from filing an application for this location. First, the Bureau has already licensed the 113° W.L. orbital location to a company; thus it is not available.³³ Second, even if 113° W.L. were available, NRTC has cited no rule or policy that entitles it to priority to the spectrum at 113° W.L.³⁴ Indeed, in processing rounds, the Commission historically has resolved competing requests for the same location by assigning one of the applicants to another location.³⁵ Further, after the Second Processing Round was completed, several Ka-band orbit locations remained available for future entry.³⁶ Thus, interested entities that did not participate in the first two processing rounds were not precluded from seeking Ka-band authorizations at unassigned additional orbital locations. The NRTC had two opportunities to participate in Ka-band processing rounds and an open-ended opportunity to file an application for an unassigned Ka-band orbital location. It did not do so.

10. Further, Ka-band licensees will not, as NRTC asserts, have an open-ended opportunity to seek reassignments to locations as they become available. Rather, in a Public Notice released concurrently with this Order, Ka-band licensees have 14 days to seek reassignment to a previously assigned orbital location that has since been relinquished or cancelled.³⁷ After this time period, all unassigned Ka-band orbital locations will be available to all applicants under the new first come, first served procedure recently adopted in the Commission’s Space Station Licensing Reform Order.³⁸

11. We note, however, that if the new satellite licensing rules go into effect during the 14-day time frame, the application of the new rules could invalidate the Bureau’s decision here to affirm the opportunity of current licensees to apply for Ka-band orbital locations first, before new applications are considered. Therefore, we waive Sections 25.155, 25.156, and 25.158 of the Commission’s rules, on our own motion, to the extent necessary to allow this limited opportunity for Ka-band reassignments.³⁹ Waiver is appropriate if special circumstances warrant a deviation from the general rules, and such deviation would better serve the public interest than strict adherence to the general rule.⁴⁰ We find that giving existing licensees the opportunity to request reassignment before considering new applications is in the public interest and consequently there is good cause for a waiver. As noted above, it is the most equitable means to allow licensees to obtain orbital locations they may have requested but were assigned

³² *NRTC Petition* at 5.

³³ The 113° W.L. orbital location is assigned to EchoStar VisionStar Corp. *See* Application of VisionStar Incorp., Shant Hovnanian, Transferor, and EchoStar VisionStar Corp., Transferee, *Order and Authorization*, 16 FCC Rcd 19187 (Int’l Bur. 2001).

³⁴ *See e.g.*, EchoStar Satellite Corporation Modification of Ka-band Authorization, *Memorandum Opinion and Order*, 17 FCC Rcd 8305, 8308 (Int’l Bur. 2002).

³⁵ Columbia Communications Corp., *Order on Reconsideration*, 18 FCC Rcd 9448, 9452-53 (Int’l Bur. 2003).

³⁶ *Second Round Assignment Order*, 16 FCC Rcd at 14396.

³⁷ International Bureau Explains Procedure for Ka-band GSO-Like Satellite Applications, *Public Notice*, Report No. SPB 189, DA 03-2630 (rel. August 12, 2003).

³⁸ *Space Station Licensing Reform Order*, 18 FCC Rcd at 10764.

³⁹ 47 C.F.R. § 1.3; 47 C.F.R. §§ 25.155, 25.156, and 25.158.

⁴⁰ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990); *see also*, *Wait Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (stating that in granting waivers the Commission may take into account considerations of hardship, equity or more effective implementation of overall policy).

to other applicants. In addition, the Ka-band licensees that are presently working on implementing their systems are in the best position to meet ITU bring-into-use dates for the locations that had been previously assigned. Finally, we emphasize that the waiver granted here is for a limited time period, and for a limited number of Ka-band orbital locations only.

IV. CONCLUSION AND ORDERING CLAUSES

12. Based on the foregoing, we conclude that there is no justification for granting reconsideration of the Second Round Assignment of Geostationary Satellite Orbit Locations in the Ka-band Order.

13. Accordingly, IT IS ORDERED, that the Petition for Reconsideration filed by the National Rural Telecommunications Cooperative is DENIED.

14. IT IS FURTHER ORDERED, pursuant to Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, that current Ka-band GSO FSS licensees ARE GRANTED waivers of Sections 25.155, 25.156, and 25.158 of the Commission's rules, 47 C.F.R. §§ 25.155, 25.156, 25.158, to the extent necessary, for a period ending 14 days after the release date of this Order, for the purposes set forth in this Order.

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson
Chief, International Bureau